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7 TRUE HEALTH CHIROPRACTIC INC, et
al.,
8 Plaintiffs,
9 v.
10 MCKESSON CORPORATION, et al.,
11 Defendants.

Case No. [13-cv-02219-HSG](#)

**ORDER REGARDING SUMMARY
JUDGMENT PROCEDURE AND
DENYING DEFENDANTS' MOTION
TO STAY**

Re: Dkt. No. 317

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13 Currently pending before the Court is Plaintiffs' renewed motion for class certification.
14 Dkt. No. 292. At the hearing on the motion, the Court advised the parties that it was inclined to
15 permit narrow summary judgment briefing before ruling on the renewed motion for class
16 certification. Due to some opposition by Plaintiffs, the Court permitted limited briefing on
17 whether this procedure was permissible, which has since been completed. *See* Dkt. Nos. 316, 319.
18 After carefully considering the parties' arguments, the Court finds that limited summary judgment
19 briefing is both permitted and warranted in these circumstances. Accordingly, the Court finds in
20 its discretion that Defendants may move for summary judgment as to whether voluntarily
21 providing a fax number on product registration and/or agreeing to the End User License
22 Agreement constitutes express permission. The parties are directed to meet and confer and submit
23 a stipulated summary judgment briefing schedule by April 19, 2019. The proposed schedule
24 should include an August 1, 2019 hearing date and briefing should be completed by July 1, 2019.

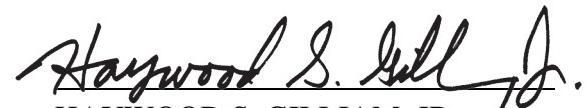
25 Also pending before the Court is Defendants' motion to stay the action pending the
26 Supreme Court's decision on Defendants' pending petition for writ of certiorari, briefing for
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1 which is complete. *See* Dkt. Nos. 317, 318, 321.¹ A district court has discretionary power to stay
2 proceedings in its own court. *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1109 (9th Cir. 2005). A
3 court, in evaluating a motion to stay, must weigh the competing interests at stake. *CMAX, Inc. v.*
4 *Hall*, 300 F.2d 265, 268 (9th Cir. 1962). Among the competing interests are: (1) the possible
5 damage that may result from a stay; (2) the hardship or inequity a party may suffer by being
6 required to proceed; and (3) the stay's potential effect on the orderly course of justice, measured in
7 terms of simplifying or complicating issues, proof, and questions of law. *Lockyer*, 398 F.3d at
8 1110.

9 The Court finds that a stay is not warranted under the circumstances. Not only will little
10 hardship or inequity occur if the case moves forward without a stay, but the likelihood of any
11 simplification of the case is slight, given how infrequently the Supreme Court grants petitions for
12 writ of certiorari. The Court thus **DENIES** Defendants' motion to stay.

13 **IT IS SO ORDERED.**

14 Dated: 4/17/2019

15 
16 HAYWOOD S. GILLIAM, JR.
17 United States District Judge

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29 ¹ The Court finds this matter appropriate for disposition without oral argument and the matter is
deemed submitted. *See* Civil L.R. 7-1(b).